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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1974

NO. 74-532

CHESTER McKINNEY,

Petitioner

versus

STATE OF ALABAMA,

Respondent

## BRIEF AND ARGUMENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA AND APPENDIX

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## BRIEF AND ARGUMENT FOR RESPONDENT

I

### OPINIONS OF THE COURTS BELOW

The memorandum of the Court of Criminal Appeals of Alabama, affirming the Petitioner's conviction without opinion, is not reported.

The order and opinion of the Supreme Court of Alabama affirming the Petitioner's conviction are reported as follows: *McKinney v. State,* —— Ala. ——, 296 So. 2d 228 (1974).

## II

## QUESTIONS PRESENTED

### A.

Is an individual denied due process of law when he is prosecuted and convicted under a state statute outlawing obscenity where he is convicted under a construction of the statute defining "obscenity" in accordance with the pre-*Miller* standards and where state appellate courts reviewed said conviction in light of the *Miller* standards?

### B.

May a party complain of a deprivation of his constitutional rights to both a fair trial and due process because a statute, requiring that he have prior knowledge that the pornographic material he is offering for sale has been declared judicially obscene under a procedure established by the statute before he may be prosecuted under said statute, deprives him of his right to confrontation?

### C.

May a party who is convicted of selling an obscene publication complain that he lacked *scienter* of the nature of the publication, where the evidence shows that he was previously informed by officials and by letter that the



publication had been judicially declared obscene, and that the sale took place following the warning?

### D.

Where a party engages in the regular business of selling publications which violate or approach violating the criminal statutes relating to obscenity and for that reason the party charges his customers higher prices than are charged by other business for publications of similar size and quality which do not approach a violation of the law, may such a party challenge a criminal conviction growing out his business on the grounds that he did not realize the publication in point was obscene?

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First and Fourteenth Amendments to the Constitution of the United States.

Act No. 856, 1961 Regular Session of the Alabama Legislature. Acts of Alabama, Regular-Special Sessions, 1961, Vol. II, pages 1310-1316. (Appendix A).

## IV.

## STATEMENT OF THE CASE

The Alabama Supreme Court stated the case and the facts as follows:

> "This is a pornography case involving the sale of a magazine entitled "New Directions" after it had been judicially found to be obscene.

" 'New Directions' is published in North Hollywood, California by Jaybird Enterprises, Inc. The masthead states that it is a 'cultural, scientific, educational, and sociological publication produced and distributed to illuminate the conviction that the unclothed human body is worthy of respect and deserving of increased acceptance in our culture . . . . Subscription rates, $14.00 per year. Second-class postage paid in North Hollywood, California.' A review of its pictures contained in the magazine introduced into evidence as an exhibit reveal photographs of nude men and women exposing their genital organs in a revolting manner; male kissing female body near her genital organ; females shown with their legs spread-eagle apart exposing their genital organs; male kissing the female breast; male sitting over female with his genital organ touching her mouth, and many more similar poses—the magazine contains 61 pages in all. After review of pictures of these grotesque nudes, a person of reasonable sensibilities will conclude that it is no wonder God made man and woman to wear clothes. Without them some are the most unattractive animals in His kingdom.

" 'New Directions' was one of a number of magazines declared to be obscene in a decree rendered by the Circuit Court of Mobile County on February 26, 1970, in an action styled, State of Alabama, ex rel Attorney General of Alabama, ex rel District Attorney of the 13th Judicial Circuit of Alabama v. The Magazine, 'Jaybird U. S. A.', No. 16, Vol. 4, No. 4; The Magazine, 'New Directions', No. 14, Vol. 4, et al., Case Number 76399. Each of the magazines was determined to be mailable matter and each was declared to be contraband. There appears to be a typographical error in the style of the



case which refers to No. 14, Vol. 4 of 'New Directions'. The decree refers to No. 16, Vol. 4, No. 4.

"On March 10, 1970, a State attorney accompanied by a State investigator, went to the Paris Bookstall, Birmingham, Alabama, a place of business operated by McKinney, and personally delivered a letter to McKinney informing him that 'New Directions' had been judicially declared to be obscene. On March 31, 1970, these officers returned to the Paris Bookstall and purchased the magazine, 'New Directions' from McKinney. While there, and with McKinney looking on, and in the presence of the investigator, the State attorney 'flipped' through the pages of the magazine. Afterwards, they left, and the investigator signed a complaint charging McKinney with violating Title 14, §374(4), Code of Alabama 1940, Recompiled 1958, by selling obscene material which had been judicially declared to be obscene. McKinney was convicted in a trial before a jury and was given the maximum sentence under the statute. Before retiring, the jury was charged by the court that the only issue of fact for them to decide involved the question of selling material judicially declared obscene as charged in the complaint.

"McKinney appealed his conviction to the Court of Criminal Appeals. The appellate court affirmed the trial court without rendering an opinion. Upon his application for rehearing being denied, McKinney filed a petition for certiorari, alleging deprivation of constitutional rights; that this was a case of first impression. We granted certiorari.

"Neither McKinney nor the State introduced evidence in the trial on the question of obscenity, vel non.

McKinney raised that issue in a motion to quash the complaint which the trial judge overruled. A motion to exclude the evidence was also overruled by the trial court. The validity of the judgment of the Mobile Circuit Court was questioned by McKinney on objection to its introduction in evidence, first in the sense that he was not a party to the action, second that the State had to prove by affirmative evidence that the subject magazine was obscene in this trial.

"The action in the Mobile Circuit Court was filed pursuant to the provisions of Act No. 856, § 5 through § 11, Acts of Alabama 1961, Vol. II. The court acting as trier of fact found the magazines to be obscene. The 1961 Act defnes obscene to mean 'lewd, lascivious, filthy and pornographic and *that to the average person, applying contemporary community standards, its dominant theme taken as a whole appeals to prurient interest.*'" (Emphasis added.)

The Supreme Court of Alabama affirmed the Petitioner's conviction on May 9, 1974. *McKinney v. State*, —— Ala. ——, 296 So. 2d 228 (1974).

## V.

## ARGUMENT

### A.

The Petitioner argues at length that he was denied due process because the state courts had previously construed the Act in question to outlaw obscenity as defined prior to *Miller v. California* (413 U. S. 15, 37 L. Ed. 2d 419, 93 S. Ct. 2607 [1973]), but, that although he was tried under



the pre-*Miller* definition, his appeal was decided under the *Miller* standards. There are several serious difficulties with the Petitioner's arguments.

First, "obscenity" under the Act in question, Appendix "A", had never been construed or defined prior to the Petitioner's case. *Visual Educators Inc. v. Koeppel*, (289 Ala. 410, 268 So. 2d 22 [1972]) cited by the petitioner, did not concern the Act but rather concerned the general public policy relating to obscenity. Only two cases appear to have been decided under the Act prior to *Miller*. These were: *McKinney v. Tuscaloosa*, 49 Ala. App. 21, 268 So. 2d 488 (1972) and *Bush v. Tuscaloosa*, 50 Ala. App. 44, 276 So. 2d 629 (1973), the latter being decided about three months before *Miller*. Both cases were reversed on procedural grounds and required no application of any definition of "obscenity" to the materials involved. Therefore, the Petitioner cannot complain that the definition of obscenity was changed; prior to *Miller* the Alabama Courts had not construed "obscenity" under the Act. And, when it was construed, the State Courts appropriately followed *Miller*.

The second difficulty with the Petitioner's argument is that he was tried and convicted under the pre-*Miller* definition. The pre-*Miller* standards were considerably more liberal that the *Miller* standards. If "New Directions", No. 16, Vol. 4, No. 4, presented some weird case of a publication which could be outlawed prior to *Miller*, but not under *Miller*, the Petitioner might have an argument. However, Chief Justice Heflin's concurring opinion in the case of *Ballew v. State*, —— Ala. ——, 296 So. 2d 206 (1974), indicated that the Court kept an eye on both sets of standards in deciding these cases.

The third difficulty with the Petitioner's argument is

that it has been decided against him in *Hamling v. United States*, —— U. S. ——, 41 L. Ed. 2d 590, 94 S. Ct. —— (1974).

B.

Petitioner next argues he was deprived of his constitutional rights to a fair trial, due process and confrontation because the obscenity of the magazine was not tried and proven during his trial. Rather, it was established by the State that the magazine had been declared judicially obscene by a court of appropriate jurisdiction in Alabama, that Petitioner was personally handed a letter informing him of the judicial declaration, and that after such knowledge Petitioner sold the publication three weeks later.

After the status of the res (the obscenity of the publication involved herein) was established, was it necessary to prove the magazine's obscenity again? Surely not. The statute Petitioner violated makes it illegal to, among many other things, sell obscene printed matter known by the seller to have been judicially declared obscene. This is perhaps a kind of statute of first impression to this Honorable Court. It does not, like so many statutes, attempt to make it illegal to sell obscene matter with scienter. Rather it eliminates the guesswork on the part of dealers in obscene publications by putting the determination of obscenity of a particular publication in a civil proceeding. In such a scheme of things the dealer has full and fair warning of what the State will or will not allow him to sell within obscenity guidelines.

It is not the mere selling of obscene matter that this statute makes criminal, but the selling of obscene matter with knowledge of its contents and *with knowledge that it has been declared judicially obscene*. (Emphasis supplied).



By the words of the statute itself, the obscenity of the publication need not be proven.

Obscenity, as a legal term, is not capable of being said to exist in degrees. Either a publication is obscene, or it is not.

> "The definition of obscenity, however is not a question of fact, but one of law; the word 'obscene,' as used in 18 U. S. C., § 1461 [18 U. S. C. A., § 1461], is not merely a generic or descriptive term, but a legal term of art."
>
> *Hamlin v. United States*, —— U. S. ——, 41 L. Ed. 2d 590, 94 S. Ct. —— (1974).

In this case, obscenity was a question of law—a question decided by a court and answered by deciding that the magazine, the basis of this prosecution, was indeed obscene. Therefore, it was not a question of fact necessary to be proven at Petitioner's trial.

The process is analagous to a charge of assault with a deadly weapon when the assault is perpetrated by the use of a gun, knife, club, etc. The fact that these "weapons" are deadly is not a question of fact, but of law. The law takes notice of the fact that such weapons can indeed kill a person. Therefore, in such a prosecution it is not necessary to prove such a weapon is a deadly weapon. Likewise, in the case at bar, there was no question of fact, but one of law previously decided against Petitioner.

Petitioner argues the statute deprives him of his right to confrontation. Admittedly, Petitioner was not a party to the civil action wherein the magazine was judicially declared obscene. However, as the Supreme Court of Alabama pointed

out in its decision affirming Petitioner's conviction, there are constitutional safeguards provided.

> "Constitutional safeguards are provided in the Act for one charged with violating its provisions. Section 5 provides for the institution of proceedings for an adjudication in a Circuit Court. (While this section provides that the action shall be filed in a Court of Equity, under the Rules of Civil Procedure adopted by this court on July 3, 1973, there is now only one form of action known as a "Civil Action". Rule 2, Rules of Civil Procedure.) Section 6 of this Act provides the type of complaint to be filed and the allegations which the complaint shall contain. Section 7 provides that an order to show cause shall be issued and service of same, upon the res and the person charged. Section 8 gives the respondent the opportunity to file defensive pleadings and permits answer by amicus curiae. Section 9 provides for maximum promptness of the hearing commensurate with constitutional requirements, including due process, freedom of the press, and freedom of speech. The burden is on the State to prove obscenity, vel non, in the adjudication of same."

Petitioner argues strenuously that the Act under which he was convicted was unconstitutional—void for vagueness. In speaking to this point in *Miller*, supra, Chief Justice Burger stated:

> "Under the holdings announced today, no one will be subject to prosecution for the sale or exposure of obscene materials unless these materials depict or describe potently offensive 'hard core' sexual conduct specifically defined by the regulating state law, as written or construed. We are satisfied that these specific



> prerequisites provide fair notice to a dealer in such materials that his public and commercial activities may bring prosecution. See *Roth v. United States*, supra, 491-492, 1 L. Ed. 2d 1498. Cp. *Ginsbcrs v. New York*, 390 U. S., at 643, 20 L. Ed. 2d 195."

In reading this part of that opinion, one can see that the concern of this Court is "fair notice" to a dealer in dirty books. These particular words quoted above point to a statute criminalizing only the sale of obscene matter, not the sale of obscene matter with knowledge of its judicial declaration of obscenity. What better "fair notice" can be instituted than that established in the Act involved in the case at bar? The Supreme Court of Alabama mentioned in its opinion affirming Petitioner's conviction, *McKinney v. State*, —— Ala. ——, 296 So. 2d 228 (1974), a notable part of Justice Douglas' dissent in *Miller*, supra.

> "'If a specific book, play, paper, or motion picture has in a civil proceeding been condemned as obscene and review of that finding has been completed, and thereafter a person publishes, shows, or displays that particular book or film, then a vague law has been made specific.'" 37 L. Ed. 2d 419, at 441-442.

Furthermore, most of these same arguments were put forward in *Hamling v. United States, (supra)* and were decided contrary to Petitioner's claim.

Petitioner also argues that during his trial it was never shown he had knowledge of the contents of the material he distributed. He relies on the case of *Smith v. California*, 361 U. S. 147, 4 L. Ed. 2d 205, 80 S. Ct. 215 (1959) for his proposition. However, there is a very important and distinct difference in the Alabama statute involved in the case at bar and the California statute invalidated in that case.

The California statute sought to make the proprietor of a bookstore absolutely liable criminally for the mere possession in his store of a book *later* judicially determined to be obscene. This procedure is completely the reverse of the procedure Alabama has established in Title 14, Section 374, Code of Alabama 1940. As stated above, Alabama's statute requires a judicial determination of obscenity, communication personally to the individual sought later to be held liable, and then finally, the sale of that publication.

In reply to this argument this writer would first suggest again such a statement is directed toward a statute criminalizing the mere sale of obscene matter. It has already been clearly shown the Alabama statute involved in the case at bar is not such a statute, but also requires the knowledge of the fact the publication has been judicially declared obscene.

Additionally, one must consider the facts in this case. Petitioner was personally informed the magazine "New Directions" had been declared judicially obscene. This alone should be sufficient to make a dealer in pornographic materials curious enough to inspect the magazine in order to determine its contents. But more importantly, would not such a warning in and of itself sufficiently put him on notice, and provide on his part the requisite knowledge of the nature and character of the magazine?

In this writer's opinion there could be no better assurance of such knowledge. It is important to note that in the case at bar, Petitioner had three weeks from the time he was informed of the judicial declaration of obscenity to the time of the sale made the basis of his prosecution to inspect the magazine, consider its contents to determine if he wished to challenge the obscenity decree, and if not, clear it from his



shelves. It seems he decided he would ignore the decree, and by such reckless disregard and utter contempt of the law attempt to plead he did not have knowledge of the nature and contents of the magazine.

C.

The Petitioner's arguments on *scienter* appear to disregard the fact that he was formally warned of the judicial determination of the obscenity of "New Directions", No. 16 Vol. 4, No. 4, prior to the sale out of which his conviction grew. This petitioner can hardly claim that he lacked *scienter*. He was officially warned in writing that "New Directions", No. 16, Vol. 4, No. 4 had been declared judicially obscene. The Petitioner did nothing about the warning and three weeks later sold the magazine which forms the basis of this prosecution.

D.

The petitioner was not convicted for preaching unpopular political ideas. Nor, is he a religious or phylosophical dissenter. He has not been convicted for engaging in discussion or dissemination of his ideas. Rather, he was, to put it bluntly, the operator of a "dirty book" store.

One theme which runs throughout our law is that different standards apply to the individual who does something gratuitously than apply to the businessman who does the same thing for profit. This distinction has been recognized in the area of expression. In *Stanley v. Georgia*, (394 U. S. 557, 22 L. Ed. 2d 542, 89 S. Ct. 1243 [1969]), this Honorable Court ruled that a state may not outlaw the private possession of obscene matter. *Stanley* was cited with approval

in *Miller v. California* (413 U. S. 15, 19, 37 L. Ed. 2d 419, 427, 93 S. Ct. 2607 [1973]). Yet, further on in *Miller*, the Majority makes this observation;

> "The dissenting Justices sound the alarm of repression. But, in our view, to equate the free and robust exchange of ideas and political debate with commercial exploitation of obscene material demeans the grand conception of the First Amendment and its high purposes in the historic struggle for freedom. It is a misuse of the great guarantees of free speech and free press. . . . Breard v Alexandria, 341 US, at 645, 95 L Ed 1233, 35 ALR2d 335. The First Amendment protects works which, taken as a whole, have serious literary, artistic, political, or scientific value, regardless of whether the government or a majority of the people approve of the ideas these works represent. The protection given speech and press was fashioned to assure unfettered interchange of *ideas* for the bringing about of political and social changes desired by the people, Roth v United States, supra, at 484, 1 L Ed 2d 1498 (emphasis added). See Kois v Wisconsin, 408 US, at 230-232, 33 L Ed 2d 312; Thornhill v Alabama, 310 US, at 101-102, 83 L Ed 1093. But the public portrayal of hard core sexual conduct for its own sake, and for the ensuing commercial gain is a different matter. [footnote omitted] 413 U. S. 15, 34-35, 37 L. Ed. 2d 419, 437.

Therefore, there is established a distinction between the person who engages expression, even of an obscene nature, privately and gratuitously and the businessman who engages in the sale of commercial obscenity.

In the instant case, the evidence shows that the petitioner operated an "Adult Book Store." Such stores have sprung



up across the land. These businesses are dedicated to the sale of commercial materials of an erotic nature. These materials are outlandishly expensive, often times costing many times the price of similar publications which are not erotic in nature. Since it costs no more to reproduce erotic materials than it does to reproduce great works of art of a similar size and quality, and, from all reports, business is excellent, it must be assumed that the high prices are designed to compensate the businessman for the risks he runs in selling the stuff. To permit such an individual to avoid these risks by embracing an Amendment designed to protect intellectual dissent and discussion is pointless.

## CONCLUSION

In conclusion, the Respondent, the State of Alabama, respectfully submits that the decision of the Supreme Court of Alabama is correct and that the writ of certiorari ought to be denied and prays such denial.

Respectfully submitted,

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## APPENDIX

## APPENDIX A

ACTS OF ALABAMA, 1961, Regular-Special Sessions,
Vol. II, Pages 1310-1316.

ACT No. 856.



Act No. 856

### AN ACT

To supress traffic in obscene publications, defining terms, prescribing penalties, and providing enforcement procedures against residents or non-residents.

*Be It Enacted by the Legislature of Alabama:*

Section 1. TITLE. This Act shall be known as the Alabama Law on Obscenity and may be referred to by that designation.

Section 2. PURPOSE AND INTENT OF ACT. The spread of obscene publications, during the past several years, has become a matter of increasingly grave concern to the people of this State. The elimination of this evil and the consequent protection of the citizens and residents of this State against such publications are in the best interests of the morals and general welfare of the people. The accomplishment of these ends can best be achieved by providing public prosecutors both with the speedy civil remedy for obtaining a judicial determination of the character and contents of publications and with an effective power to reach non-residents responsible for the composition, publication and distribution of obscene publications within this State.

Section 3. DEFINITIONS. The following words, terms and phrases used in this Act shall, for the purpose of this Act, have the meaning respectively ascribed to them in this Section:

"Mailable matter" means (a) printed or written matter or material having second class mailing privileges under the laws of the United States; or (b) any other printed or written matter or material which has not been determined to be nonmailable under the laws of the United States.

"Obscene" means lewd, lascivious, filthy and pornographic and that to the average person, applying contemporary community standards, its dominant theme taken as a whole appeals to prurient interest.

"Person" means any individual, partnership, firm, association, corporation or other legal entity.

"Printed or written matter or material" means any book, pamphlet, magazine, periodical, newspaper, picture magazine, comic book, story book, or other printed or written matter, but does not include written or printed matter or material used by or in any religious, scientific or educational institution.

Section 4. CRIMINAL PROVISIONS AND PENALTIES.

(1) Every person who, with knowledge of its contents, sends or causes to be sent, or brings or causes to be brought, into this State for sale or commercial distribution, or in this State prepares, sells, exhibits or commerically distributes, or gives away or offers to give away, or has in his possession with intent to sell or commercially distribute, or to give away or offer to give away, any obscene printed or written matter or material, other than mailable matter, or any mailable matter, or any mailable matter known by such person to have been judicially found to be obscene under this Act, shall be guilty of a misdemeanor and, upon conviction, shall be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than one year, and may be fined not more than Two Thousand Dollars for each offense, or be both so imprisoned and fined in the discretion of the Court.



(2) Every person who, with knowledge of its contents, has in his possession any obscene printed or written matter or material, other than mailable matter, or any mailable matter known by such person to have been judicially found to be obscene under this Act, shall be guilty of a misdemeanor and, upon conviction, shall be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months, or may be fined not more than Five Hundred Dollars for each offense, or be both so imprisoned and fined in the discretion of the Court.

Section 5. MAILABLE MATTER; COMMENCEMENT OF ACTION. Whenever the Solicitor for any Judicial Circuit or County Solicitor has reasonable cause to believe than any person, with knowledge of its contents, is (1) engaged in sending or causing to be sent, bringing or causing to be brought, into this State for sale or commercial distribution, or is (2) in this State, preparing, selling, exhibiting or commercially distributing or giving away, or offering to give away, or has in his possession with intent to sell, or commercially distribute, or to exhibit or give away or offer to give away, any obscene mailable matter, the Solicitor for the Judicial Circuit or County into which such mailable matter is sent or caused to be sent, brought or caused to be brought, or in which it is prepared, sold, exhibited or commercially distributed or given away or offered to be given away, or possessed, may institute an action In Equity in the Circuit Court of any Court having Equity jurisdiction of the affected County for an adjudication of the obscenity of the mailable matter.

Section 6. ACTION TO DECLARE MAILABLE MATTER OBSCENE. The action authorized by Section 5 shall be commenced by the filing of a complaint to which shall be

attached, as an exhibit, a true copy of the allegedly obscene mailable matter. The complaint shall:

(a) be directed against the mailable matter by name or description;

(b) allege its obscene nature;

(c) designate as Respondents and list the names and addresses, as known, of its author, publisher and any other person sending or causing it to be sent, bringing or causing it to be brought into this State for sale or commercial distribution, and of any person in this State preparing, selling, exhibiting or commercially distributing it, or giving it away or offering to give it away, or possessing it with the intent to sell or commercially distribute or exhibit or give away or offer to give it away;

(d) pray for an adjudication that it is obscene;

(e) pray for a permanent injunction against any person sending or causing it to be sent, bringing or causing it to be brought, into this State for sale or commercial distribution, or in this State preparing, selling, exhibiting or commercially distributing it, giving away or offering to give it away, or possessing it with the intent to sell or commercially distribute or exhibit or give away or offer to give it away; and

(f) pray for its surrender, seizure and destruction.

Section 7. ORDER TO SHOW CAUSE. Upon filing of the complaint, described in Section 6, the Solicitor or Register of the Court shall present the same, including the exhibit thereto, as soon as practicable to the Court for its examination. If there is no probable cause to believe that the mailable matter described in the complaint is obscene, the Court shall dismiss the complaint. If the Court finds probable cause to believe such matter to be obscene it may forthwith



issue an order temporarily restraining and prohibiting the sale or distribution of such matter and it shall issue an order to show cause why the same shall not be adjudicated obscene, returnable not less than ten days after its service, directed against the mailable matter by name or description and directing the service of a copy thereof, together with a copy of the complaint, upon such mailable matter and upon each of the Respondents named in the complaint. Service of such order shall be made upon such mailable matter at its place of publication or its editorial offices as shown therein. Service of such order may be made in any manner provided by law and, in case of mailable matter published or edited outside the Statt of Alabama and of any nonresident Respondent, by registered or certified mail directed to the mailable matter or the Respondent to be served at the address shown in the complaint. Proof of such mailing shall be deemed to be prima facie evidence of service of such order upon the mailable matter of any Respondent for the purposes of this Section.

Section 8. APPEARANCE, ANSWER AND TRIAL DATE.

(1) On or before the return date specified in the order to show cause, the mailable matter and each Respondent may appear and file defensive pleadings.

(2) The Court may permit any person to appear and file an answer as amicus curiae.

(3) If no person files an answer or other defense on or before the return date specified in the order to show cause, the court may forthwith determine whether the mailable matter is obscene and enter an appropriate order.

(4) Upon the expiration of the time for filing answer

and other defenses by the mailable matter and other Respondents, the Court shall set a date for the trial of the case.

Section 9. PUBLIC POLICY, PROCEDURE. The public interest requires that all actions prescribed by this Act, other than criminal actions under Section 4, be heard and disposed of with the maximum promptness and dispatch commensurate with constitutional requirements, including due process, freedom of press and freedom of speech. The Rules of Civil Procedure pertaining to Equity cases shall be applicable to the trial of such actions except that the time limits therein concerning notice of trial, the presentation of evidence and other proceedings may be shortened, if the party or parties affected or concerned have notice thereof and the Court finds the same to be in the public interest.

Section 10. DECREE. In the event the Court finds the mailable matter to be obscene, it shall enter a decree to such effect and may, in such decree or in subsequent orders of enforcement thereof:

(a) enter a permanent injunction against any Respondent, prohibiting him from doing or continuing to do any thing condemned by this Act;

(b) direct any resident Respondent to dispose of all such obscene mailable matter in his possession or under his control under such conditions and within such time as the Court may find to be reasonable;

(c) direct all Sheriffs in the State to seize and destroy all such obscene mailable matter in the possession or under the control of any Respondent who shall fail to comply with the Court's orders;

(d) enter any other and appropriate orders to effectuate the decree or injunction.



Section 11. INJUNCTION. Every order granting an injunction shall set forth the reason for its issuance; shall be specific in terms; shall describe in reasonable detail and not by reference to the complaint, the act or acts restrained and shall be binding only upon the Respondents, to the action and upon those persons in active concert or participation by contract or arrangement with such Respondents who receive actual notice of the order by personal service or otherwise.

Copies of the order of the Court, finding any matter to be obscene, and all orders of injunction issued in regard thereto, shall be served upon all Respondents named in the complaint and in the manner as provided in Section 7 of this Act.

Section 12. WHEN MAILABLE MATTER IS NOT EXEMPT. Any mailable matter which is sent or caused to be sent, brought or caused to be brought into this State for sale or commercial distribution, or which in this State is sold, exhibited or commercially distributed, given away or offered to be given away or offered to be given away by any person, with knowledge of the decree finding it to be obscene, or is in the possession of any such person with intent to sell or commercially distribute or exhibit, or give away or offer to give away, is subject to the provisions of Section 4 of this Act.

Section 13. CONTEMPT. Any respondent or any person in active concert or participation by contract or agreement with such respondent, with actual notice by personal service or otherwise, of any injunction or restraining order entered pursuant to Sections 10 and 11 of this Act, and who shall disobey any of the provisions thereof, shall be guilty of contempt of Court.

Section 14. EXTRADITION. In all cases in which a Court has entered its decree pursuant to Section 10 that the mailable matter in question is obscene, and a charge of continuing violation is thereafter brought against a person who is a Respondent to such decree, who cannot be found in this State, the Governor shall, unless such person shall have appealed from such decree and such appeal has not been finally determined, demand his extradition from the Executive Authority of the State in which such person may be found pursuant to the laws of this State.

Section 15. PRESUMPTIONS. The possession of any three of the things enumerated in Section 4 of this Act (except the possession of them for the purpose of return to the person from whom received) shall create a presumption that they are intended for sale or commercial distribution, exhibition or gift, but such presumption shall be rebuttable. The burden of proof that their possession is for the purpose of return to the person from whom received shall be on the possessor.

Section 16. NON-RESIDENTS, JURISDICTION, PROCESS, CONSENT. In order to protect the morals and general welfare of the citizens and residents of this State against obscene printed or written matter or material originating outside of this State, it is the purpose of this Section to subject to the jurisdiction of the Court of this State those persons, including non-residents, who are responsible for the importation of such matter into this State and, by such act, submit themselves to the jurisdiction of the Court of this State and any action authorized by Section 5 of this Act.

Section 17. SEVERABILITY. If any provision, clause, sentence, paragraph, section, phrase or part of this Act, or the application thereof to any person or circumstance, is held



invalid, the invalidity shall not affect any other provisions, clauses, sentences, paragraphs, sections, phrases, parts or applications of this Act which can be given effect without the invalid provision, clause, sentence, paragraph, section, phrase, part or application. To this end the provisions, clauses, sentences, paragraph, sections, phrases or part of this Act are declared to be severable.

Section 18. REPEAL AND SAVINGS CLAUSE. All laws and parts of laws inconsistent or in conflict with this Act are, to the extent of their inconsistency or conflict, hereby repealed. This Section shall not be construed to affect any suits pending or rights existing or any liability or penalty incurred under those laws at the time this Act shall take effect.

Section 19. This Act shall become effective upon its passage, approval by the Governor or its otherwise becoming a law.

Approved September 8, 1961

Time: 1:38 P.M.

## CERTIFICATE OF SERVICE

I, Joseph G. L. Marston, III, Assistant Attorney General, one of the attorneys for the State of Alabama, Respondent, and a member of the Bar of the Supreme Court of the United States, do hereby certify that on this _____ day of December, 1974, I did serve the requisite number of copies of the foregoing Brief and Argument and Appendix on each of the Attorneys for the Petitioner, by mailing the same to them, first class postage prepaid, in the case of Mr. Ritchey and Air Mail postage pre-paid in the case of the other attorneys, and addressed to them as follows:

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